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No. 595

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

ALICE SCHURINGA, ANNA C. FOUT, DR. PAUL THORELIUS, and JOSE M. LENONE,

Petitioners,

VS.

CITY OF CHICAGO, a Municipal Corporation, RICHARD J. DALEY, individually and as Mayor of said City, CARL H. CHATTERS, individually and as Comptroller of said City, JAMES W. JARDINE, individually and as Commissioner of the Department of Water and Sewers of said City, and W. W. DE BERARD, individually and as Deputy Commissioner for Water of said Department and Chief Water Engineer in Charge of the Bureau of Water,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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It is unfortunate, but true, that respondents' brief in opposition includes a great deal of unnecessary, irrelevant and actually improper matter, the effect of which is to becloud and confuse the issues before the Court.

For example, respondents now advance the proposition that the Chicago fluoridation program merely involves "increasing the amount of fluorine present in the water". This is most misleading, since no-one herein has at any time claimed that the Chicago water supply (as naturally drawn from Lake Michigan) would contain any significant amount of fluoride. Moreover, the City's own evidence herein conclusively shows that the fluoride being placed in the Chicago water supply is not intended to affect the water itself. In this regard, City Water Purification Engineer Baylis stated that fluoridation does not purify the water or make it more palatable (Ab. 322). Deputy Water Commissioner DeBerard testified that the fluoridation program is something additional, and he also stated (Ab. 242; T704):

> "We are under mandate by the City Council to put the fluorine in the water, and we carry out the operations."

The *sole and only purpose* of the Chicago fluoridation program is to administer fluoride to the entire population, for treatment of the teeth, the public water supply being employed simply as the vehicle, or "conduit".

Other examples of irrelevant and improper matter could be cited to the Court, but time and space preclude any detailed review thereof. Suffice it to say that petitioners sincerely hope that these attempts to "muddy the waters" will not obscure the vital and precious issues of Constitutional liberties involved herein, concerning which respondents have made no real response.

Petitioner Lenone Properly Before the Court

Respondents urge that Petitioner Lenone is not properly before the Court. It is contended that he cannot petition to this Court, because he was not an initial party to this

cause. It is further argued that the right to intervene, pursuant to the applicable Illinois statute, is "solely *'at the discretion'* of the court.", and that (citing the case of *Jackson* v. *Pioletti,* 346 Ill. App. 569, 105 N.E. 2d 779 (1952), the denial of petitioner Lenone's application to intervene in the Court below was therefore proper. Respondents further urge that this Court is powerless to review the action of the lower Court, pursuant to its decision in the case of *Zorach* v. *Clausen,* 343 U.S. 306 (1952).

No such limitations bar said petitioner. Shortly before plaintiff, Walter Olson, passed away, a motion to dismiss his appeal, then already argued and under advisement, was filed with the Illinois Supreme Court. However, on December 30, 1963, before an order on the motion was entered, he passed away. Petitioner Lenone immediately sought to intervene because the untimely death of Walter Olson had brought about a situation whereby no Christian Scientist remained a party herein. (See Appendix B herein, attached to petitioners' petition for writ of certiorari, for the text of his petition.)

Respondents herein have sought to bemuse the issues (by citing certain statements of one William C. Wines, Esq.) to infer that the Christian Science Church does not oppose fluoridation anymore. The said Wines did not actually represent Plaintiff Olson (see App. 27, attached to the petition for writ of certiorari). Nor did he have any standing in Court when he sought to have the said Olson withdraw his appeal. The Christian Science Church has never been a party to this cause. In any event, the position of the Church now is, and always has been, *unalterably opposed* to fluoridation.

Section 26.1 of the Illinois Civil Practice Act, under which said petition was filed, contains no time limitation whatsoever. In fact, it is clearly contemplated (Subsection (6) thereof) that a petition thereunder may be filed *subsequent to* "orders, judgments, or decrees theretofore entered". The provisions of the statute are clear and unmistakable in this respect. Understandably, respondents do not argue the statutory provisions, *per se*, but cite *Corpus Juris Secundum* (Section 273, "Federal Courts") as presumably barring this Court from reviewing the grievances presented herein by Petitioner Lenone. However, even said section states in part the following (page 749):

> "Where a party to an action in a state court specially claims a right under the Constitution or laws of the United States, the decision of the state court as to the sufficiency of the allegations to present such claim is not necessarily conclusive on the Supreme Court."

The lower Court had no discretion whatsoever to deny intervention by Petitioner Lenone. The case of *Jackson* v. *Pioletti* (346 Ill. App. 569, 105 N.E. 2d 779), urged by respondents as holding that intervention under Illinois law is "solely '*at the discretion*' of the court", was decided in 1952, *three years before* the statute involved herein was enacted, and is wholly inapplicable. Section 26.1 of the Illinois Civil Practice Act provides for intervention *as of right* "when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by a judgment, decree or order in the action . . ." (See Appendix "E" attached to the petition for writ of certiorari, for applicable text.) Despite the fact that Petitioner Lenone's application to intervene was in meticulous compliance with this statute, the Court denied it, arbitrarily and without hearing.

Nor does this Court's decision in the case of *Zorach* v. *Clausen*, 343 U.S. 306, bar this Court from considering the violation of petitioner Lenone's religious and Constitutional rights, whereby he is being medicated against his will and religious compunctions through his only practicable source of water. Said case, which involved the question of "released time" in New York schools, is devoid of any mention whatsoever concerning intervention, and contains no ruling regarding the rights of an intervenor in a State Court.

This Court has repeatedly held that the vagaries of State procedure may not be interposed to defeat Constitutional liberties and rights.

Lower Court Violated Its Own Decisions

In its opinion herein, the Illinois Supreme Court dismissed the vital religious issues as being "moot", the opinion also stating "this Court, *unless the public interest demands it*, will not consider abstract questions . . ." (Emphasis added.)

Petitioners respectfully submit that, even had Petitioner Lenone not sought to intervene, the "public interest" nevertheless required consideration of these questions by the Court, and, in refusing to consider them, the Court violated its own rulings and precedents.

The case of *People* v. *Labrenz*, 411 Ill. 618, 104 N.E. 2d 769 (1952) involved the refusal, on religious grounds, of parents to consent to a blood transfusion for their child. The trial Court appointed a guardian, who authorized the transfusion. On appeal the State urged that the issues were "moot", the transfusion having been administered, the guardian discharged, and the proceeding dismissed. The

Illinois Supreme Court rejected these contentions, stating (page 772):

> "Before we reach the merits, we meet the State's contention that the case is now moot and should be dismissed because the blood transfusion has been administered, the guardian discharged, and the proceeding dismissed. Because the function of courts is to decide controverted issues in adversary proceedings, moot cases which do not present live issues are not ordinarily entertained . . .
>
> "But when the issue presented is of substantial public interest, a well-recognized exception exists to the general rule that a case which has become moot will be dismissed upon appeal. See cases collected in 132 A.L.R. 1185. Among the criteria considered in determining the existence of the requisite degree of public interest are the public or private nature of the question presented, the desirability of an authoritative determination for the future guidance of public officers, and the likelihood of future recurrence of the question.
>
> "Applying these criteria, we find that the present case falls within that highly sensitive area in which governmental action comes into contact with the religious beliefs of individual citizens."

Does not the case at bar necessarily fall "within that highly sensitive area in which governmental action comes into contact with the religious beliefs of individual citizens", involving as it does the subjecting of Petitioner Lenone and thousands of other members of his faith, *against their will*, to medication added to their sole source of water supply?

Petitioners respectfully submit that the Illinois Supreme Court should have ruled concerning the vital religious issues involved in this cause, and that its failure to do so was grossly erroneous.

Respectfully submitted,

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